

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IVAN BLACK,

Plaintiff,

vs.

Case No. 10-11211

HON. BERNARD A. FRIEDMAN

MAGISTRATE JUDGE PAUL J. KOMIVES

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Magistrate Judge Paul J. Komives' Report and Recommendation ("R and R") dated February 29, 2012, recommending that the Court grant in part Defendant Michigan Department of Corrections' ("MDOC") second motion for summary judgment. Further, the R and R recommends that the Court not dismiss this matter, as the granting of summary judgment will not encompass the entirety of Plaintiff's claim for relief. Neither party filed an objection to the R and R.

This Court has had an opportunity to fully review this matter and hereby adopts and incorporates Magistrate Judge Komives' procedural history and factual background into this Opinion, as contained in pages 2 through 13 in the R and R. Further, the Court has fully reviewed the parties' filings, and believes that the Magistrate Judge has reached the correct conclusions for the proper reasons.

Plaintiff's complaint makes claims pursuant to 42 U.S.C. § 1983 regarding his treatment while incarcerated. Before the Court is MDOC's Rule 56 motion for summary judgment for

failure to exhaust administrative remedies. The Court has reviewed the pleadings and the R and R, and finds that Magistrate Judge Komives reached the right conclusions for the proper reasons.

As a result of the Court's February 15, 2011 Order granting in part and denying in part Defendant's motion to dismiss and motion for summary judgment, Plaintiff's only remaining claim is regarding his misconduct points. Defendant's instant motion argues that Plaintiff did not properly exhaust his administrative remedies. The Court agrees with Magistrate Judge Komives' conclusion that Defendant is entitled to summary judgment as to Plaintiff's first claim for relief to the extent that it alleges that the June 24, 2009 misconduct points were wrongfully issued, because Plaintiff has not exhausted his administrative remedies as to such claim.

Additionally, the Court agrees with Magistrate Judge Komives' interpretation of Plaintiff's first claim as also being in part for a non-grievable offense, for which available administrative remedies need not be exhausted. Therefore, to the extent that Plaintiff's first claim for relief is for a non-grievable offense, Defendant is not entitled to summary judgment on the basis of exhaustion.

Accordingly,

IT IS ORDERED that Magistrate Judge Komives' Report and Recommendation dated February 29, 2012 is hereby ACCEPTED AND ADOPTED.

IT IS FURTHER ORDERED that Defendant's Second Motion for Summary Judgment is GRANTED IN PART and DENIED in part.

Dated: March 23, 2012
Detroit, Michigan

s/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE